

# Montana State Legislature

## **2013 Session**

### **ADDITIONAL DOCUMENTS MAY INCLUDE THE FOLLOWING:**

- **Business Report**
- **Roll Call – Attendance**
- **Standing Committee Reports**
- **Tabled Bills**
- **Fiscal Reports etc.**
- **Roll Call Votes**
- **Informational Items**
- **Witness Statements**
- **Any Documents; such as;**
  - \* **Petitions if any.**
  - \* **Any and all material handed end after the meeting ends.**

**The original is on file at the  
Montana Historical Society  
and may be viewed there.**

**Montana Historical Society  
Archives**

**225 N. Roberts**

**Helena MT 59620-1201**

**2013 Legislative Scanner Susie Hamilton**

**BUSINESS REPORT**  
**MONTANA SENATE**  
**63rd LEGISLATURE - REGULAR SESSION**  
**SENATE JUDICIARY COMMITTEE**

**Date:** Monday, March 18, 2013  
**Place:** Capitol

**Time:** 9:00 AM  
**Room:** 303

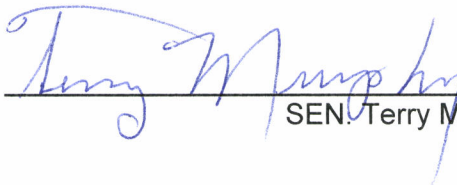
**BILLS and RESOLUTIONS HEARD:**

HB 304 - Generally revise concealed weapons laws - Rep. Krayton Kerns  
HB 459 - Revise privacy laws related to medical treatment and firearms - Rep. Krayton Kerns  
SB 367 - Revise laws for DUI violations - Sen. Sue Malek

**EXECUTIVE ACTION TAKEN:**

HB 304-BE CONCURRED IN  
HB 168-BE CONCURRED IN  
HB 510-BE CONCURRED IN AS AMENDED  
HB 369-BE CONCURRED IN/MOTION WITHDRAWN  
HB 355-BE CONCURRED IN/MOTION FAILED/REVERSED THE VOTE AND TABLED

**Comments:**

  
\_\_\_\_\_  
SEN. Terry Murphy, Chair

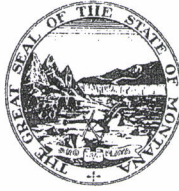
# MONTANA STATE SENATE

## 2013 JUDICIARY COMMITTEE

### ROLL CALL

DATE: 3/18/13

<u>NAME</u>	<u>PRESENT</u>	<u>ABSENT/ EXCUSED</u>
CHAIRMAN, SENATOR TERRY MURPHY	—	
VICE CHAIRMAN, SENATOR SCOTT SALES	—	
SENATOR SHANNON AUGARE		—
SENATOR ANDERS BLEWETT	—	
SENATOR SCOTT BOULANGER	—	
SENATOR JOHN BRENDEN		—
SENATOR ROBYN DRISCOLL	—	
SENATOR JENNIFER FIELDER	—	
SENATOR LARRY JENT	—	
SENATOR CLIFF LARSEN	—	
SENATOR CHAS VINCENT		—
SENATOR ART WITTICH	—	



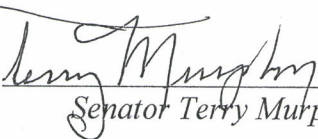
## SENATE STANDING COMMITTEE REPORT

March 18, 2013

Page 1 of 1

Mr. President:

We, your committee on **Judiciary** recommend that **House Bill 304** (third reading copy -- blue) **be concurred in.**

Signed:   
Senator Terry Murphy, Chair

To be carried by Senator Chas Vincent

- END -

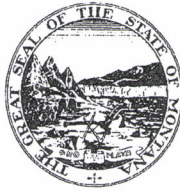
**Committee Vote:**

**Yes 7, No 5**

Fiscal Note Required ☐

HB0304001SC13859.swr





## SENATE STANDING COMMITTEE REPORT

March 18, 2013

Page 1 of 1

Mr. President:

We, your committee on **Judiciary** recommend that **House Bill 168** (third reading copy -- blue) be concurred in.

Signed: \_\_\_\_\_

*Terry Murphy*  
Senator Terry Murphy, Chair

To be carried by Senator Larry Jent

- END -

**Committee Vote:**

**Yes 11, No 1**

Fiscal Note Required ☐

HB0168001SC13542.swr



## SENATE STANDING COMMITTEE REPORT

March 18, 2013

Page 1 of 2

Mr. President:

We, your committee on **Judiciary** recommend that **House Bill 510** (third reading copy -- blue) **be concurred in as amended.**

Signed:   
Senator Terry Murphy, Chair

To be carried by Senator Terry Murphy

**And, that such amendments read:**

1. Title, page 1, line 8.

**Following:** "~~13-1-210,~~"

**Insert:** "13-1-210,"

**Following:** "7"

**Insert:** ", "

2. Page 1, following line 24.

**Insert:** "**Section 1.** Section 13-1-210, MCA, is amended to read:

**"13-1-210. Standard application form for voter registration and absentee ballot requests.** (1) The secretary of state shall establish by rule a standard application form, to be used by each election administrator, that allows an individual to apply for voter registration and to request to be added to the absentee ballot list in order to receive ballots for subsequent elections.

(2) Pursuant to 13-13-212(4), the absentee ballot application portion of the standard form must include substantially the following language and options:

Optional: I request an absentee ballot to be mailed to me for as long as I reside at the address listed:

☐ for each subsequent election in which I am eligible to vote; or

☐ for each subsequent federal election in which I am eligible to vote.

I understand that in order to continue to receive an absentee ballot, I must complete, sign, and return a confirmation

**Committee Vote:**

**Yes 12, No 0**

Fiscal Note Required ☐

March 18, 2013

Page 2 of 2

form that will be mailed to me in January of ~~each~~ every even-  
numbered year.""

**Renumber:** subsequent sections

- END -

## BILL TABLED NOTICE


### SENATE JUDICIARY COMMITTEE

The **SENATE JUDICIARY COMMITTEE** TABLED

**HB 355 - Eliminate the 5-year look back for alcohol and drug driving offenses - Rep. Christy Clark**

by motion, on **Monday, March 18, 2013** (PLEASE USE THIS ACTION DATE IN LAWS BILL STATUS).

  
\_\_\_\_\_  
(For the Committee)

  
\_\_\_\_\_  
(For the Secretary of the Senate)

12:35  
(Time)

3/18  
(Date)

March 18, 2013 (12:29pm)

Pam Schindler, Secretary

Phone: 406-444-4891  
-----



**MONTANA STATE SENATE**  
**ROLL CALL VOTE**  
**2013 JUDICIARY COMMITTEE**

DATE 3/18/13 BILL NO. HB304 MOTION NO. 1

MOTION:

Be Concurred In

<u>NAME</u>	<u>AYE</u>	<u>NO</u>	If Proxy Vote, check here & include signed Proxy Form with minutes
VICE CHAIRMAN, SENATOR SCOTT SALES	<u>—</u>		
SENATOR JOHN BRENDEN	<u>—</u>		<u>—</u>
SENATOR JENNIFER FIELDER	<u>—</u>		
SENATOR CHAS VINCENT	<u>—</u>		<u>—</u>
SENATOR SCOTT BOULANGER	<u>—</u>		<u>—</u>
SENATOR ART WITTICH	<u>—</u>		<u>—</u>
SENATOR SHANNON AUGARE		<u>—</u>	<u>—</u>
SENATOR ANDERS BLEWETT		<u>—</u>	
SENATOR ROBYN DRISCOLL		<u>—</u>	
SENATOR LARRY JENT		<u>—</u>	
SENATOR CLIFF LARSEN		<u>—</u>	
CHAIRMAN, SENATOR TERRY MURPHY	<u>—</u>		

7/5 Demanded

# MONTANA STATE SENATE

## ROLL CALL VOTE

### 2013 JUDICIARY COMMITTEE

DATE 3/18/13 BILL NO H168 MOTION NO. 1

MOTION:

Be Concurred In

NAME	AYE	NO	If Proxy Vote, check here & include signed Proxy Form with minutes
VICE CHAIRMAN, SENATOR SCOTT SALES	<u>1</u>		
SENATOR JOHN BRENDEN	<u>1</u>		<u>1</u>
SENATOR JENNIFER FIELDER	<u>1</u>		
SENATOR CHAS VINCENT	<u>1</u>		<u>1</u>
SENATOR SCOTT BOULANGER	<u>1</u>		<u>1</u>
SENATOR ART WITTICH	<u>1</u>		<u>1</u>
SENATOR SHANNON AUGARE	<u>1</u>		<u>1</u>
SENATOR ANDERS BLEWETT	<u>1</u>		
SENATOR ROBYN DRISCOLL		<u>1</u>	
SENATOR LARRY JENT	<u>1</u>		
SENATOR CLIFF LARSEN	<u>1</u>		
CHAIRMAN, SENATOR TERRY MURPHY	<u>1</u>		

11/1 (Jent)

**MONTANA STATE SENATE**  
**ROLL CALL VOTE**  
**2013 JUDICIARY COMMITTEE**

DATE 3/17/13 BILL NO HBS10 MOTION NO. 2

MOTION:

amendment

S1003.

<u>NAME</u>	<u>AYE</u>	<u>NO</u>	If Proxy Vote, check here & include signed Proxy Form with minutes
VICE CHAIRMAN, SENATOR SCOTT SALES	1		
SENATOR JOHN BRENDEN	1		1
SENATOR JENNIFER FIELDER	1		
SENATOR CHAS VINCENT	1		1
SENATOR SCOTT BOULANGER	1		1
SENATOR ART WITTICH	1		1
SENATOR SHANNON AUGARE	1		1
SENATOR ANDERS BLEWETT	1		
SENATOR ROBYN DRISCOLL	1		
SENATOR LARRY JENT	1		
SENATOR CLIFF LARSEN	1		
CHAIRMAN, SENATOR TERRY MURPHY	1		

12/0



# MONTANA STATE SENATE

## ROLL CALL VOTE

### 2013 JUDICIARY COMMITTEE

DATE 3/18/13 BILL NO HBS12 MOTION NO. 1

MOTION:

Reconciled has amended

NAME	AYE	NO	If Proxy Vote, check here & include signed Proxy Form with minutes
VICE CHAIRMAN, SENATOR SCOTT SALES	—		
SENATOR JOHN BRENDEN	—		—
SENATOR JENNIFER FIELDER	—		
SENATOR CHAS VINCENT	—		—
SENATOR SCOTT BOULANGER	—		—
SENATOR ART WITTICH	—		—
SENATOR SHANNON AUGARE	—		—
SENATOR ANDERS BLEWETT	—		
SENATOR ROBYN DRISCOLL	—		
SENATOR LARRY JENT	—		
SENATOR CLIFF LARSEN	—		
CHAIRMAN, SENATOR TERRY MURPHY	—		

12/0

(Murphy)



# MONTANA STATE SENATE

## ROLL CALL VOTE

### 2013 JUDICIARY COMMITTEE

DATE 3/17/13 BILL NO. HB355 MOTION NO. 1

MOTION: Be Concurred In

NAME	AYE	NO	If Proxy Vote, check here & include signed Proxy Form with minutes
VICE CHAIRMAN, SENATOR SCOTT SALES		<u>1</u>	
SENATOR JOHN BRENDEN		<u>1</u>	<u>1</u>
SENATOR JENNIFER FIELDER	<u>1</u>		
SENATOR CHAS VINCENT		<u>1</u>	<u>1</u>
SENATOR SCOTT BOULANGER		<u>1</u>	
SENATOR ART WITTICH		<u>1</u>	
SENATOR SHANNON AUGARE	<u>1</u>		<u>1</u>
SENATOR ANDERS BLEWETT	<u>1</u>	<u>1</u>	
SENATOR ROBYN DRISCOLL	<u>1</u>		
SENATOR LARRY JENT	<u>1</u>		
SENATOR CLIFF LARSEN	<u>1</u>		
CHAIRMAN, SENATOR TERRY MURPHY		<u>1</u>	

5/7

**MONTANA STATE SENATE**  
**ROLL CALL VOTE**  
**2013 JUDICIARY COMMITTEE**

DATE 3/18/13 BILL NO HB355 MOTION NO. 2

MOTION:

Revisable

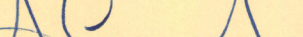
<u>NAME</u>	<u>AYE</u>	<u>NO</u>	If Proxy Vote, check here & include signed Proxy Form with minutes
VICE CHAIRMAN, SENATOR SCOTT SALES	-		
SENATOR JOHN BRENDEN	-		-
SENATOR JENNIFER FIELDER	-		
SENATOR CHAS VINCENT	-		-
SENATOR SCOTT BOULANGER	-		
SENATOR ART WITTICH	-		
SENATOR SHANNON AUGARE		-	-
SENATOR ANDERS BLEWETT		-	
SENATOR ROBYN DRISCOLL		-	
SENATOR LARRY JENT		-	
SENATOR CLIFF LARSEN		-	
CHAIRMAN, SENATOR TERRY MURPHY	-		

7/5



# SENATE PROXY

I, Senator Alfaro, hereby authorize Senator  
LARSEN to vote my proxy before the  
Senate JUDICIARY meeting held on  
                    , 2013.

  
 \_\_\_\_\_  
 Senator Signature (Sen. Shannon Augare)

3/18/13 Date

Said authorization is as follows: *(mark only one)*

- ☐ All votes, including amendments.
- ☐ All votes as directed below on the listed bills, and all other votes.
- ☐ Votes only as directed below.

[illegible]

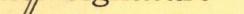






# SENATE PROXY

I, Senator Branstetter, hereby authorize Senator  
SALES to vote my proxy before the  
 Senate JUDICIARY meeting held on  
11/15/2013, 2013.

  
\_\_\_\_\_  
Senator Signature (Sen. John Brenden)

3/18/13 Date

Said authorization is as follows: *(mark only one)*

- ☒ All votes, including amendments.
- ☐ All votes as directed below on the listed bills, and all other votes.
- ☐ Votes only as directed below.

[illegible]








# SENATE PROXY

I, Senator Boulanger, hereby authorize Senator  
SALES to vote my proxy before the  
Senate JUDICIARY meeting held on  
                    , 2013.

  
\_\_\_\_\_  
Senator Signature (Sen. Scott Boulanger)

3/18/18 Date

Said authorization is as follows: *(mark only one)*

- ☒ All votes, including amendments.
- ☐ All votes as directed below on the listed bills, and all other votes.
- ☐ Votes only as directed below.

[illegible]







# SENATE PROXY

I, Senator Viment, hereby authorize Senator  
SALES to vote my proxy before the  
 Senate JUDICIARY meeting held on  
                    , 2013.

*Chas Vincent*  
 \_\_\_\_\_  
 Senator Signature (Sen. Chas Vincent)

5/18/15 \_\_\_\_\_  
Date

Said authorization is as follows: *(mark only one)*

- ☒ All votes, including amendments.
- ☐ All votes as directed below on the listed bills, and all other votes.
- ☐ Votes only as directed below.

[illegible]








# SENATE PROXY

I, Senator WITTEN, hereby authorize Senator  
SALES to vote my proxy before the  
 Senate JUDICIARY meeting held on  
                    , 2013.

  
 Senator Signature (Sen. Art Wittich)

3/18/13  
Date

Said authorization is as follows: *(mark only one)*

- ☒ All votes, including amendments.
- ☐ All votes as directed below on the listed bills, and all other votes.
- ☐ Votes only as directed below.

[illegible]







**SENATE JUDICIARY COMMITTEE**

Sponsor: **Rep. Krayton Kerns**

**PLEASE PRINT**

[illegible]

**Please leave prepared testimony with Secretary. Witness Statement forms are available if you care to submit written testimony.**



x

11092M

141m2 m12

**SENATE JUDICIARY COMMITTEE**

Sponsor: **Rep. Krayton Kerns**

**PLEASE PRINT**

[illegible]

**Please leave prepared testimony with Secretary. Witness Statement forms are available if you care to submit written testimony.**

**SENATE JUDICIARY COMMITTEE**

Sponsor: **Sen. Sue Malek**

**PLEASE PRINT**

[illegible]

**Please leave prepared testimony with Secretary. Witness Statement forms are available if you care to submit written testimony.**



**The Supreme Court of Montana**  
Office of the Court Administrator

**ADDITIONAL  
DOCUMENTS**


**Beth McLaughlin**  
Court Administrator



301 South Park  
P.O. Box 203005  
Helena, Montana 59620-3002  
Telephone (406) 841-2950  
FAX (406) 841-2955

March 14, 2013

TO: Judge Larry Carver

FROM: Beth McLaughlin  
Court Administrator 

RE: Substitute Judges

As requested, this memo outlines the substitute judge process. In general, the substitute judges fall into three general categories:

- Other judges from nearby counties or cities (including District Court judges);
- Attorneys or retired attorneys; and
- Court clerks

The Rules require:

- (1) When a substitute judge is named to act for an absent judge or perform daily operations on an occasional basis pursuant to MCA 3-10-231(2) through (5), the substitute judge is required to obtain a waiver of training from the waiver committee. A substitute judge must be of good moral character and must have good community support, a sense of community standards, and a basic knowledge of court procedure.
- (2) The elected or appointed judge must complete and submit the request for waiver of training for the substitute judge. The prescribed forms may be obtained by writing to the commission.
- (3) The waiver committee shall review each request for waiver of training and shall advise the judge of its decision. No more than five substitute judges in one jurisdiction may receive a waiver of training in 1 year.
- (4) If the waiver committee does not approve the application for waiver of training for the substitute judge, the judge making the application may file a written request with the commission requesting a review of the matter by the commission. Upon receipt of the judge's written request for review, the commission shall consider the matter at the next



regular meeting and advise the judge of its decision. The judge making the request is encouraged to appear at the commission meeting where the matter is being considered.

The waiver committee referenced in the rule is made up of the District Court Judge, the State Bar Rep, the County Attorney Rep and the City Attorney Rep on the Commission of Courts of Limited Jurisdiction.

In my experience judges take the assignment of substitute judges very seriously and limit what substitutes can do in the court.

If you need additional information, please let me know.

**RE: HB 352 – APPOINTMENT OF ACTING JUSTICES OF THE PEACE**

**QUESTIONS AND ANSWERS FROM SENATE JUDICIARY COMMITTEE  
HEARING ON MARCH 13, 2013.**

**QUESTION 1:** Who is typically on your substitute judge list?

**ANSWER FROM JUDGE LARRY CARVER:**

My district judges have always covered for me when I am gone to training. My complete substitute list consists of other judges. It depends on what type of case I need a substitute for in determining who I appoint. Some use the clerks for initial appearances but not for anything else other than that. Some use attorneys if they will do it. Usually they won't. A person who does **not** meet the criteria for a waiver of training **CANNOT** sit as a substitute judge. **Law gives them no authority to act. A limited court judge sub or not, must either complete the training or have a waiver of training. Period! No exceptions. Otherwise they have no authority to act nor does the sitting judge have authority to appoint them!!!!**

**Judge Larry Carver, Justice of the Peace, Judith Basin County and Montana Magistrates' Association Legislative Committee Chair. 06-566-2277 Ext. 117. [lcarver@mt.gov](mailto:lcarver@mt.gov)**

**QUESTION 2:** What is the process for Waiver of Training?

**ANSWER FROM JUDGE LARRY CARVER:**

I sit on the Commission on Courts of Limited Jurisdiction that grant the waivers of training for judges. In order to get a waiver of training, the elected official makes a written application to the Commission on Courts of Limited Jurisdiction for a waiver. The application is then reviewed by the waiver committee, two members of the committee, i.e. former District Court

Judge Douglas Harkin and Professor Peggy Tonon from the Law School. They then formally make a recommendation to the full committee. The recommendation is then discussed by all the members, then the committee as a whole grants or rejects the waiver.

**The Commission on Courts of Limited Jurisdiction** consists of: 1 member from the bar association, 1 district court judge, a Justice of the Peace from a large jurisdiction, a Justice of the Peace from a small jurisdiction, a Municipal Court Judge, a City Court Judge, a county representative (usually a county attorney), a city representative (usually city attorney), 1 member at large, a Public defender, President the Magistrates Association, President of limited court clerks Association, and a Supreme Court Justice who acts as a liaison.

Keep in mind, the substitute list procedure has been around for a long time and it works well. Judges are not going to use someone who does not do a good job.

**Judge Larry Carver**, Justice of the Peace, Judith Basin County and Montana Magistrates' Association Legislative Committee Chair. **406-566-2277 Ext. 117. [lcarter@mt.gov](mailto:lcarter@mt.gov)**

**QUESTION 3:** How many substitute judges have been used in the past 2 years?

**ANSWER FROM JUDGE LARRY CARVER:**

I very rarely use a substitute judge; less than 12 times in 26 years. I usually just schedule around vacations and voluntary absences. As far as I know we do not have any way of knowing how many substitutions were made from the substitute list on a state wide basis for any given period of time. However, I would say that most judges work at least 40 hours a week excluding illness and vacation. Therefore, substitutions are not done on an everyday basis. In this county, **Rarely**. Once, maybe twice a year.



**Judge Larry Carver**, Justice of the Peace, Judith Basin County and Montana Magistrates' Association Legislative Committee Chair. 406-566-2277 Ext. 117. [lcarter@mt.gov](mailto:lcarter@mt.gov)

**QUESTION 4:** How would you feel about a proposed amendment stating that the members of the substitute lists must have legal experience? (Such as Attorneys, Court Staff, District Court Judges, other Lower Court Judges, retired Judges)

**ANSWER FROM JUDGE CARVER:**

Senator Blewitt's idea of legal background is a good one; **however**, remember in many of the rural communities the only lawyer in the county is the County Attorney. Secondly, remember that Judge Luth's bill, HB 172 which passed the House and Senate, amends 3-6-204 by lifting the years of practice requirement for substitute judges in municipal courts because lawyers simply are not interested in working as a limited court judge. We simply cannot get them to do it. It is not always possible and we can't force them to do it. When available, I know many limited court judges that prefer lawyers as substitute judges, if they can get one to do it.

**Judge Larry Carver**, Justice of the Peace, Judith Basin County and Montana Magistrates' Association Legislative Committee Chair. 406-566-2277 Ext. 117. [lcarter@mt.gov](mailto:lcarter@mt.gov)

(HB 352 Info.)